

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATTHEW CATANZARO,

Plaintiff,

vs.

CARR, et al.,

Defendants.

CIVIL ACTION NO. 10-CV-14554

DISTRICT JUDGE NANCY G. EDMUNDS

MAGISTRATE JUDGE MONA K. MAJZOUN

REPORT AND RECOMMENDATION

I. **RECOMMENDATION:** This Court recommends that Defendant Newville be dismissed from this action without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

II. **REPORT:**

Plaintiff filed the instant civil rights complaint on November 16, 2010. (Docket no. 1). In January 2011 the Court granted Plaintiff leave to proceed *in forma pauperis* and ordered the U.S. Marshal Service to effectuate service on Defendants. (Docket nos. 7, 8). On January 25, 2011 waiver of service was returned unexecuted as to Defendant Newville. On March 30, 2011 the Court again ordered service as to Defendant Newville. (Docket no. 42). Consequently, the U.S. Marshal Service made a second attempt to effectuate service on Defendant Newville on June 1, 2011 by mailing a copy of the summons and complaint to a new address provided to them by the Michigan Department of Corrections. Once again the waiver of service was returned unexecuted.

On September 23, 2011 the Court ordered Plaintiff to show cause why Defendant Newville should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m). (Docket no. 84). Plaintiff responded to the order by asking the Court to direct the U.S. Marshal Service to serve

Defendant Newville. (Docket no. 102). However, Plaintiff has not offered an alternate address for service on Defendant Newville.

The time for service of the summons and complaint is established under Federal Rule of Civil Procedure 4(m) which provides that service must be made within 120 days after the filing of the complaint. “If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed.R.Civ.P. 4(m). Service has not been effected on Defendant Newville within the time allotted under Rule 4(m). Plaintiff has not shown good cause to further extend the time for service. Accordingly, Defendant Newville should be dismissed from this action without prejudice for failure to comply with Federal Rule of Civil Procedure 4(m).

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec’y of Health & Human Servs.*, 932 F.2d 505 (6th Cir.1991); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec’y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir.1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir.1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than fourteen days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: November 1, 2011

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Matthew Catanzaro and Counsel of Record on this date.

Dated: November 1, 2011

s/ Lisa C. Bartlett
Case Manager